IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.81 of 2001

Reserved on 26.12.2007

Date of decision 29.12.2007

State of H.P. Appellant

Versus

Suresh Kumar alias Billu Respondent

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr.Virender Kumar Verma, Addl. Advocate General.

For the respondent: Mr.Ravinder Thakur, Advocate.

Rajiv Sharma,J.

The respondent was prosecuted in criminal case RBT No.10-II/2000 under Sections 336 and 338 IPC in the court of Judicial Magistrate Ist Class, Dharamshala District Kangra and was acquitted on 14.9.2000. The State has come in appeal against the judgment dated 14.9.2000.

Briefly stated the case as set out by the prosecution is that on 3.9.1999 at Village Thamba (Dargalla) in a khud when Kanta Devi was going to the house of her Bhanji as her husband had already crossed the khad a tractor being driven by accused Billu came from the opposite side along with trolley loaded with iron rods. The tractor trolley turned due to which the saria loaded in the trolley fell on the right leg of Kanta Devi resulting in grievous injuries to her. On the basis of the statement of Kanta Devi FIR was registered. The prosecution examined as many as 11 witnesses. The accused-respondent was examined under Section 313

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[1] Whether reporter of local papers is allowed to see the judgment? No.

Cr.P.C. The Judicial Magistrate Ist Class, Court No. II acquitted the respondent on 14.9.2000 hence this appeal against the acquittal of the respondent.

Mr. Varinder Kumar Verma, learned Additional Advocate General had strenuously argued that the judgment dated14.9.2000 is not sustainable in the eyes of law. He also argued that the prosecution had led cogent evidence and on that basis the respondent could not be acquitted. Mr.Ravinder Thakur, learned counsel, appearing for the respondent had supported the judgment dated 14.9.2000.

I have heard the learned counsel for the parties and also gone through the record of the case carefully.

The short question which requires determination is whether the tractor was being driven rashly or negligently by the respondent or not on 3.9.1999, resulting in injuries to Kanta Devi PW-10. PW-1 Pratap Singh husband of the complainant admitted in his statement that the trolley tilted when it fell in ditch while crossing the khad. He also admitted that the water in the khad was muddy. PW-10 Kanta Devi the complainant also admitted that the water in the khad was muddy and the tractor was moving on its left side. PW-2 Kashmir Singh was declared hostile. PW-3 has also admitted that the water in the kahd was muddy at the time of accident and it was not possible to see the exact location of the khad. PW-4 Swaroop Singh admitted in his cross-examination that the accident did not take place due to the negligence of any person. It is thus evident that all the witnesses have stated in unison that the water in the khad was muddy and the trolley fell in the ditch resulting in injuries to the complainant. There is no clear evidence that the accident took place due to rash and negligent driving of the accused. The trial court on the basis of the contradictions/infirmities in the statements of the witnesses, have come to

the just conclusion that the prosecution has failed to prove its case against the accused. The judgment of the learned Judicial Magistrate Ist Class, Court No. II is well reasoned judgment as such it calls for no interference. The appeal is accordingly dismissed. The bail bonds furnished by the respondent are discharged

December 29, 2007(g) **(Rajiv Sharma), J.**